

MEMORANDUM OF LAW

DATE: April 17, 1990

TO: Larry Grissom, Retirement Administrator

FROM: City Attorney

SUBJECT: Safety Member 1981 Plan Buy Back

In a memorandum dated February 23, 1990, you asked two questions which arose during the January 1990 Retirement Board meeting. The first question concerning conflict of interest was answered by separate correspondence. This Memorandum of Law responds to the following question.

Is there a difference for the purpose of conducting an election between the unclassified member "buy back" enacted into the Code in 1987 without an election and the proposed "buy back" for City members in the 1981 Plan?

City Charter section 143.1 requires that no ordinance amending the City Employees' Retirement System (CERS) which affects the benefits of any employee under such retirement system shall be adopted without the approval of the majority vote of the members of the system. The 1987 amendment referred to in your memorandum is found in San Diego Municipal Code section 24.0312 and pertains to the right of members in the safety system to purchase creditable years of service in CERS for periods in which they were otherwise eligible but not members of CERS and sets forth the procedures for such purchase. The ability of these members to purchase creditable years of service in CERS, under the terms and conditions of the ordinance, has no affect on the level of benefit for any member of CERS. The new "buy back" program permits members of the safety system of the 1981 Plan to purchase a benefit level comparable to CERS through a combination of increased employee contributions and increased City contributions. The new "buy back" program is in reality, an upgrading of benefits above those currently authorized.

An election is required for the new "buy back" program because affected members will receive a higher level of benefit as a result of the program. The "buy back" program enacted into

the Code in 1987 did not affect the level of benefit for any employee in CERS but merely authorized an employee to purchase at the employee's own expense previous creditable years of service which had been waived by the employee.

JOHN W. WITT, City Attorney

By

John M. Kaheny
Chief Deputy City Attorney

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ML-90-52